

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

3 UNITED STATES OF AMERICA,)
4 Plaintiff,) No. 3:23-MJ-4483-MSB
5 v.) December 19, 2023
6 MICHAEL GORDON DOUGLAS,)
7 Defendant.) Courtroom 2A
8) San Diego, California

9 TRANSCRIPT OF DIGITALLY RECORDED PROCEEDINGS

10 (Detention Hearing)

11 BEFORE THE HONORABLE MICHAEL S. BERG, MAGISTRATE JUDGE

12
13 APPEARANCES:

14 FOR THE PLAINTIFF:

AMANDA GRIFFITH
Assistant U.S. Attorney
U.S. Attorney's Office
Southern District of California
880 Front Street, Room 6293
San Diego, CA 92101-8893
(619) 557-5610

17
18 FOR THE DEFENDANT:

CASSIDY HEVERLING
Assistant Federal Defender
Federal Defenders of San Diego
225 Broadway, Suite 900
San Diego, CA 92101-5008
(619) 234-8467

21
22
23 COURT REPORTER:

AMANDA M. LeGORE
RDR, CRR, CRC, FCRR, CACSR
U.S. District Court
333 West Broadway, Suite 420
San Diego, CA 92101
amanda_legore@casd.uscourts.gov

(Tuesday, December 19, 2023; 3:14 p.m.)

P R O C E E D I N G S

THE CLERK: Calling matter number six, 23-MJ-4483,
United States of America versus Michael Gordon Douglas.

ATTORNEY GRIFFITH: Good afternoon, your Honor.
Amanda Griffith appearing on behalf of the United States.

ATTORNEY HEVERLING: Good afternoon, your Honor.
Cassidy Heverling from Federal Defenders, on behalf of the
person charged. That's Michael Douglas.

THE COURT: And that is you, sir?

THE DEFENDANT: Yes.

THE COURT: Good afternoon.

Okay. And this is set for a detention hearing?

ATTORNEY GRIFFITH: Yes, your Honor.

THE COURT: And it's going forward?

MS. GRIFFITH: Yes, your Honor.

THE COURT: Okay. Go ahead.

ATTORNEY GRIFFITH: Your Honor, we're moving on risk
of flight and danger to the community.

We would note that the complaint alleges a case that
carries presumption of detention. I would also note for the
Court, and I've shared it with defense counsel, that
Mr. Douglas was just recently indicted this afternoon in the

1 Southern District of Florida. So he is now no longer just
2 facing a complaint but an actual Indictment that mirrors the
3 charges in the complaint.

4 The facts and circumstances surrounding this case,
5 your Honor -- I know that the complaint was lengthy. So your
6 Honor is aware --

7 THE COURT: I actually read it.

8 ATTORNEY GRIFFITH: I understand. And the general
9 information is there.

10 I would note that the complaint ceases communication
11 at least a week before we were able to actually arrest
12 Mr. Douglas. And the communications in that week continued in
13 fervor, as Mr. Douglas was anticipating meeting with the
14 undercover agent -- or he didn't know they were undercover at
15 the time -- and her eight-year-old child.

16 He repeatedly, in those continued communications --
17 which were not detailed in the complaint -- talked about his
18 excitement at wanting to meet the child, the circumstances and
19 what he was going to do with the child. There was specific
20 discussions about specific sex toys and the use of a speculum.

21 There was also a video that was transmitted to the
22 undercover of Mr. Douglas masturbating and ejaculating on
23 lingerie, which will be significant here in a second.

24 So the facts and the circumstances regarding this
25 case, I think, clearly establish that he poses a danger to the

1 community.

2 Regarding the specific arrest, Mr. Douglas was set to
3 make arrangements to meet with what he thought was the child
4 and her mother at a hotel in Carlsbad, at Legoland; an area
5 that he suggested they meet.

6 Attempts were made to set up that meet at different
7 points in time. Mr. Douglas was, at the time of his arrest, in
8 the accompaniment of an adult woman who we believe is unhoused
9 at that particular time, and he was providing services to her
10 in an attempt to get her hotels.

11 He remained in contact with the undercover, making it
12 clear that he was being delayed but he had every intention of
13 meeting at the hotel and wanted to meet. We even have a
14 recorded phone call where he makes it clear that he very much
15 wants to meet with this child, and do the things that he has
16 promised to do.

17 At some point in time, Mr. Douglas must have realized
18 that there was something amiss, and he engaged in a chase with
19 HSI when they attempted to make contact with him.

20 For some reason, he was driving his aunt's vehicle.
21 She's present in the court, as well as the defendant's mother.
22 And those are the individuals with whom Mr. Douglas lives.

23 But they contain aftermarket lights. So Mr. Douglas
24 engaged those lights and engaged in a chase with agents.
25 Certainly giving the appearance that he had the right and the

1 licenses, as a law enforcement officer or something, to engage
2 in this particular chase.

3 When the --

4 THE COURT: But he had law enforcement lights?

5 ATTORNEY GRIFFITH: He had lights. I don't think
6 they were red and blue. But they certainly were lights that
7 gave people reason to believe -- my agents described it as
8 potentially construction lights, as yellow and orange. But
9 during the chase, he engaged them himself in an effort to --

10 THE COURT: Move traffic.

11 ATTORNEY GRIFFITH: -- move traffic around, or make
12 it clear that he had the right of passage.

13 When, ultimately, he was able to be stopped or he
14 stopped in a parking lot, HSI agents boxed him in, commanded he
15 get out. Mr. Douglas then proceeded to display a grenade.
16 While this adult woman was in the car, she apparently fell out
17 of the car, screaming, "He's going to kill us. He's going to
18 kill us all."

19 It took him a lengthy period of time, while weapons
20 were drawn on him, to let go of the grenade and get out of the
21 vehicle. They were ultimately able, after bomb squad was
22 called out, to determine that the grenade was in fact a
23 replica. But that wasn't made clear until they were actually
24 able to put their hands on it and realize that it was not an
25 M-67-type grenade.

1 Those are the facts and the circumstances surrounding
2 it, that I think clearly demonstrate that his attempts to
3 engage with law enforcement were not well received and pose a
4 danger.

5 With respect to the -- this particular case,
6 Mr. Douglas has a criminal history, as noted in the Pretrial
7 Services report, including a prior for distribution of harmful
8 material to a minor.

9 Similar, he was engaged in an undercover sting that
10 led to that particular conviction. Because of that prior, he
11 is now facing a 15-year mandatory minimum for each one of the
12 seven counts that he has been indicted on as of this afternoon.

13 I would also note that he does have criminal history
14 for DUI. He also has an evading arrest. He was able to
15 successfully complete his probation, and no longer has to
16 register on the sex offender registry because he was determined
17 to be a low risk to recidivate. But I think the circumstances
18 and the facts surrounding his arrest today bear something
19 different.

20 I would also note that a search incident to the
21 arrest involving the vehicle revealed that there was a bag in
22 place that contains a teddy bear, as Mr. Douglas had promised
23 the undercover he was going to provide; a speculum that he was
24 going to use on the 8-year-old to stretch her out, were his
25 words; various sex toys, including anal beads and a bullet,

1 which were referenced in the chat; and the lingerie, which the
2 video was sent to the undercover, was also recovered in that
3 same bag. So it leads to the strength of the evidence of
4 Mr. Douglas being the person who was communicating in the
5 undercover chats to be very strong.

6 I would note that he does admit to drug use of
7 methamphetamine and cocaine. He admits he's an infrequent
8 user. But, by his own admission, he had used both of those off
9 and on in the last week.

10 With respect to risk of flight, he has no ties to
11 Florida, your Honor. He has no reason to show up, to go there,
12 or to face the charges there.

13 I appreciate that he is employed in a not-for-profit
14 that he runs, and makes approximately -- by his own
15 admission -- \$50 a month. But he has no other source of
16 income, and relies on his aunt and his mother. Doesn't
17 contribute rent.

18 So the lack of employment is a concerning thing.
19 Doesn't give us reassurance that he's going to otherwise stick
20 around.

21 Make sure -- there was no other grenades found in the
22 vehicle, but there was a number of knives that were found as
23 well.

24 The woman -- the adult woman who he was in custody --
25 or company with all week -- or during that day. Excuse me,

1 your Honor. Not all week. Was interviewed by law enforcement,
2 and she confirmed that Mr. Douglas had expressed his
3 frustration with her that they were unable to successfully find
4 a place for her to go because Ms. -- she was making Mr. Douglas
5 late for the very important date that he had.

6 So I think, your Honor, with the facts and
7 circumstances surrounding the case; the strength of the
8 evidence; the mandatory minimums on which this particular
9 defendant is facing; his criminal history, including a prior
10 for exactly the same conduct; his admission to methamphetamine
11 and cocaine use; not having any stable employment; no ties to
12 Florida, does not give this Court -- should not give this Court
13 any confidence that he will otherwise appear and be available
14 and not pose a risk of flight or danger to the community.

15 And unless the Court has any other specific
16 questions, I would submit.

17 THE COURT: What are his guidelines, just out of
18 curiosity?

19 ATTORNEY GRIFFITH: Your Honor, I believe, when
20 speaking with my colleague -- I have not run his specific
21 guidelines. But I think he could be looking at up to the 210
22 to 240 range, depending on some of the facts and the
23 circumstances.

24 I don't have the full summary of all of the images
25 that he was accused of distributing child pornography for. But

1 a conservative assessment would probably put it at 210 to 240,
2 based on my familiarity with 2G2.2. And he is facing a 40-year
3 statutory maximum.

4 He also could be facing additional charges as well,
5 your Honor, related to enticement. He is not going to be
6 facing any charges -- at least here, for right now -- regarding
7 his conduct in the escape or the threatened use of the grenade.

8 THE COURT: Okay. Thank you.

9 ATTORNEY HEVERLING: Thank you, your Honor.

10 In this case, we are asking the Court to set
11 conditions of release to be secured by a property bond in the
12 amount of \$50,000, which would be secured by the family home.

13 I've spoken with his mother and his aunt of --
14 (indiscernible) Patricia, who are here in the courtroom today.

15 THE COURT: Thank you for being here.

16 ATTORNEY HEVERLING: And they have agreed and believe
17 in my client, and -- and have agreed they're willing to post
18 that bond if it were to be granted.

19 I want to begin by addressing the flight in this
20 case. I believe my client is not a serious risk of flight. He
21 currently lives in Escondido with his mother and his aunt.

22 As they're getting older, he has been taking on
23 additional duties in the home, including helping with meals and
24 cleaning around the house. So he is an asset to their
25 household.

1 With the property bond set in this case, my client
2 would not consider fleeing, and putting his mother and aunt at
3 risk of homelessness and losing their home.

4 As to the alleged flight from the officers, there are
5 factual questions at issue as to whether there were -- these
6 were marked cruisers or that he was aware that these were
7 police officers that were chasing him at that moment in time.

8 And, additionally, as Government counsel noted, the
9 grenade in this case was not operational. The knives found in
10 the car -- you know, my client was not prepared to be arrested
11 that day. Simply carrying a knife is not a crime.

12 In addition, he has demonstrated that he can comply
13 with court orders, as he has successfully completed five years
14 of probation for a prior conviction from 2011. And, in fact,
15 was deemed to be rehabilitated in 2021 from those charges. And
16 based on that information, I don't believe he's a flight risk
17 in this case.

18 In addition, he has been working in his free time to
19 set up --

20 THE COURT: You said he what?

21 ATTORNEY HEVERLING: Sorry. He's been working in his
22 free time to set up a nonprofit; which works with the homeless,
23 to help find housing in the Escondido area, as well as connect
24 them to other resources in the community. So he is quite
25 connected to his community here in Escondido.

1 And as your Honor knows, community ties need -- need
2 not be to the district where the conduct is charged. It needs
3 just to be a community within the United States. And, here,
4 his -- he does have quite strong ties to the Escondido area.

5 And while the weight of the evidence is the least
6 important factor, we would also like for the Court to consider
7 that there was another individual, which the Government is
8 aware of, that was living -- living in the household with my
9 client and his family during the time that -- that this conduct
10 was alleged, who had access to his devices. So there is a
11 potential defense there, and my client is eager to litigate
12 that further.

13 And my client's mother has also informed me that that
14 individual is no longer living in that home. So if he were to
15 be released to the home, that individual would no longer be in
16 contact with them.

17 In addition, if your Honor is not satisfied by the
18 property bond, my client has also indicated he's willing to
19 comply with additional conditions that your Honor would set,
20 including home detention or GPS monitoring, or whatever would
21 make your Honor feel comfortable in this case. And if bond
22 were to be granted, he would be living at home with his mother
23 and his aunt, back in Escondido.

24 And unless your Honor has any other questions, I'll
25 submit.

1 THE COURT: I don't.

2 ATTORNEY HEVERLING: Thank you.

3 ATTORNEY GRIFFITH: And, your Honor, just to address
4 a couple of things. Is even though the grenade was fake, that
5 wasn't a determination that was made until after it was
6 released from the defendant's custody, and before he threatened
7 individuals.

8 The other individual adult that was living in the
9 house with Mr. Douglas and his mother and his aunt was somebody
10 that was invited there by Mr. Douglas. It sounds like they
11 actually had a relationship with each other and had been there
12 at the consent of everybody there.

13 I would note, as alleged in the complaint, that we
14 have a number of -- a number of photos -- self-identifying
15 photos of Mr. Douglas engaged in masturbatory acts that he sent
16 to the undercover right around the same time he was sending
17 child pornography as well. So I appreciate he might have
18 another defense with respect to the actual underlying charges;
19 the concern about Mr. Douglas being the one who is daddy breed
20 spam (phonetic) and Michael, which is the aliases alleged in
21 the complaint and were used to communicate.

22 We do believe the weight of the evidence remains
23 strong.

24 THE COURT: Thank you.

25 Anything further?

1 ATTORNEY HEVERLING: Nothing further, your Honor.

2 THE COURT: Okay. Looking at the 3142 factors, sir,
3 those factors that would weigh in favor of setting bond, as
4 opposed to those that would weigh in favor of detaining you, I
5 do believe the Government has met their burden by both clear
6 and convincing evidence as to danger to the community and
7 preponderance of the evidence that you would be a serious risk
8 of flight if you were released.

9 So, unfortunately, sir, I am going to detain you
10 during the pendency of these charges. However, you should note
11 that if at some future point in time you either admit or
12 identity is proved against you -- and I'm not saying one way or
13 the other. But if either of those were to happen, you would
14 have the opportunity to raise bond again in the District of
15 Florida.

16 Your next court date is set for December 26th, at
17 1:30, for removal I.D. hearing.

18 ATTORNEY GRIFFITH: Your Honor, in communicating, I
19 didn't have a chance to check with defense counsel.

20 Is there any way we could continue it to that
21 Thursday, the 28th?

22 Would that be a problem?

23 ATTORNEY HEVERLING: Yeah, that should be fine, your
24 Honor.

25 ATTORNEY GRIFFITH: In speaking with the case agent,

1 my colleague, Mr. Bennett, is going to be handling it. But the
2 case agent is going to be out on leave on the 26th. So that
3 will give us enough time to make sure that defense counsel has
4 copies of discovery, to deal with any potential identity
5 issues.

6 THE COURT: Is that all right with you, sir? If we
7 put that over until the 28th?

8 THE DEFENDANT: Yes, your Honor. (Indiscernible due
9 to not speaking into microphone) number one (indiscernible)
10 home.

11 THE COURT: I -- I, unfortunately, have made the bond
12 determination already. So --

13 THE DEFENDANT: (Indiscernible.)

14 THE COURT: I understand. But your attorney has done
15 an admirable job today. And I just think it's best if you --

16 THE DEFENDANT: (Indiscernible.)

17 THE COURT: -- don't make any other statements at
18 this point in time. Okay?

19 THE DEFENDANT: (Indiscernible.)

20 THE COURT: I understand your frustration. So
21 your -- your ID removal hearing will be set for -- is it
22 Thursday, December 28th?

23 UNIDENTIFIED SPEAKER: Yes, at 1:30.

24 THE COURT: Okay. 1:30.

25 ATTORNEY GRIFFITH: Thank you, your Honor.

1 THE COURT: Thank you.

2 (Conclusion of proceedings.)

3 --oOo--

4 I certify, by signing below, that the foregoing is a correct
5 stenographic transcript, to the best of my ability, of the
6 digital recording of the audio proceedings had in the
7 above-entitled matter this 27th day of December, 2023. A
8 transcript without an original signature or conformed signature
9 is not certified. I further certify that the transcript fees
10 and format comply with those prescribed by the Court and the
11 Judicial Conference of the United States.

12 /S/ Amanda M. LeGore

13
14
15
16
17
18
19
20
21
22
23
24
25
AMANDA M. LeGORE, RDR, CRR, CRC, FCRR, CACSR 14290